Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

October Term, 1996

ELDRIDGE AUTO SALES, INC.,

Petitioner,

vs.

RENEE PURTLE,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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6 HPP

QUESTION PRESENTED

In defending a claim arising under the federal Truth-In-Lending Act, Petitioner Eldridge Auto Sales, Inc. moved to compel discovery relating to the consumer's fraudulent misrepresentations contained in her credit application, to amend its answer to assert counterclaims for fraud and promissory fraud, and for partial summary judgment based on the consumer's fraudulent inducement of the credit agreement. Each of these motions was denied.

The lower courts awarded the consumer statutory damages and attorneys' fees, holding that the fraudulent inducement of the credit agreement by a consumer would not be a defense to a claim arising under the federal Truth-In-Lending Act because it is a strict liability statute. The questions presented here are:

1. Should fraud in the inducement of a credit agreement by a consumer be a defense to a claim arising under the federal Truth-In-Lending Act or should a consumer who has committed fraud in order to obtain credit be permitted to recover statutory damages and attorneys' fees from a non-compliant creditor who extended the credit based on the consumer's fraud?

2. Does a district court's failure to base its calculation of reasonable attorneys' fees awarded in federal Truth-In-Lending Act cases on the factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974), constitute an abuse of discretion.

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Eldridge Auto Sales, Inc. respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit in order to address important issues involving the administration of the federal Truth-In-Lending Act and to resolve apparent conflicts among the Circuit Courts of Appeals.

OPINIONS BELOW

The opinion of the Sixth Circuit Court of Appeals has been recommended for full text publication and is reproduced in the Appendix A filed herewith at A1. The unreported opinions of the district court are reproduced at Appendix B and C at A14 and A32, respectively.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on August 1, 1996. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1254(1).

STATUTES INVOLVED

Pertinent provisions of the federal Truth-In-Lending Act, 15 U.S.C. 1601, et seq. ("TILA"), are as follows:

> Section 1631(a): * * * [A] creditor or lessor shall disclose to the person who is obligated on a . . . consumer credit transaction the information required under this subchapter. . .
>
> Section 1601(a): * * * It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

Regulation Z, 12 C.F.R. 226, et seq., and the Official Staff Commentary on Regulation Z, further provide, in pertinent part:

> Section 226.17(c)(1): The disclosures shall reflect the terms of the legal obligation between the parties. . . .
>
> Section 226.2(a)(13): "Consummation" means the time that a consumer becomes contractually obligated on a credit transaction. . . .

(b)(3) Unless defined in this regulation, the words used have the meanings given to them by state law or contract.

The Official Staff Commentary on Regulation Z, section 226.2(a)(13):

1. When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. . . . Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction . . . unless, of course, applicable law holds otherwise. . . .

2. Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contract may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time. . . .

The Official Staff Commentary on 226.17(c)(1), which is substantially identical to the Official Staff Commentary on section 226.5(c), provides:

*** The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.**

STATEMENT OF THE CASE

Eldridge Auto Sales, Inc. extended credit to Renee Purtle for the purchase of an automobile based on information which she provided in her credit application. The purchase agreement admittedly was not misleading or inaccurate, but it failed to properly disclose several items required under TILA.

Ms. Purtle subsequently defaulted on her payments, and Eldridge Auto Sales, Inc. repossessed the vehicle and sought a deficiency judgment in state court. Ms. Purtle filed the within federal suit against Eldridge Auto Sales, Inc. for violations of TILA.

In defending against the TILA claim, Eldridge Auto Sales, Inc. moved to compel discovery relating to Ms. Purtle's fraudulent misrepresentations contained in her credit application, it moved to amend its answer to assert counterclaims for fraud and promissory fraud, and it moved for partial summary judgment based on Ms. Purtle's fraudulent inducement of the credit agreement. The district court denied each of these motion, finding that a consumer's fraudulent misrepresentations were not a defense to a claim arising under TILA.

The district court then entered partial summary judgment in favor of Ms. Purtle, finding that the purchase agreement failed to properly disclose several items required under TILA.[1] Because Ms. Purtle suffered no actual damages, the district court awarded her $1,000.00 in statutory damages and $5,444.05 in attorneys' fees and costs.

The Sixth Circuit Court of Appeals affirmed, apparently holding that because TILA is a strict liability statute, the consumer's fraud would be no defense to a claim arising thereunder. The court relied on Grant v. Imperial Motors, 539 F.2d 506 (5th Cir. 1976)(Once a court finds a violation of TILA, no matter how technical, the court has no discretion but to impose civil liability), and Dryden v. Lou Budke's Arrow Finance Company, 630 F.2d 641 (8th Cir. 1980). No petition for rehearing and suggestion for rehearing en banc was filed.

1 The purchase agreement, Appendix B, Exhibit A, demonstrates on its face that Eldridge Auto Sales, Inc. did not fail to disclose the finance charge or total sales price, but rather, used the term "Time Price Differential" stated as a dollar amount, and used the term "Balance Due" as opposed to "Total Sales Price."

REASONS FOR GRANTING THE WRIT

This Court should grant the writ in order to address important issues concerning TILA's administration, (see e.g. Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299, 105 S.Ct. 2622, 86 L.Ed.2d 215 (1985) and Pinter v. Dahl, 486 U.S. 622, 108 S.Ct. 2063, 100 L.Ed.2d 658 (1988)), and to resolve an apparent conflict between the Sixth Circuit and Seventh Circuit Courts of Appeals concerning whether a consumer's fraudulent misrepresentations in her credit application may constitute a defense to a claim arising under TILA, (see e.g. Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 100 S.Ct. 790, 63 L.Ed.2d 22 (1980); Ford Motor Credit Co. v. Cenance, 452 U.S. 155, 101 S.Ct. 2239, 68 L.Ed.2d 744 (1981)), and between the Sixth Circuit and Fifth and Ninth Circuit Courts of Appeals concerning whether the district court's failure to base its calculation of reasonable attorneys' fees in a TILA case on the factors set forth in Johnson, supra, 488 F.2d at 717-19, constitutes an abuse of discretion.

Referencing only TILA's civil liability provisions, the Sixth Circuit concluded that because TILA is a strict liability statute, the consumer's fraud would not be a defense (citing Dryden, supra, 630 F.2d 641.)[1]

However, the court's determination that TILA is a strict liability statute does not resolve the issue. This Court has expressly held that the equitable defense of in pari delicto "traditionally has been applied in any action based on conduct that 'transgresses statutory prohibitions,'" and "courts have recognized the defense in cases involving strict liability offenses." Pinter, supra, 486 U.S. at 634, 108 S.Ct. at 2071-72.

2 Dryden is distinguishable from the instant case because the credit agreement was not enforceable based on the creditor's own violation of state law, and the court correctly concluded that just because the creditor had violated state law thereby making the underlying agreement void, he should not be permitted to escape liability under TILA. See also Williams v. Public Finance Corp., 598 F.2d 349 (5th Cir. 1979)(Creditor who violated the Georgia Industrial Loan Act by extending usurious loans could still be held liable under TILA.) But see Jensen v. Ray Kim Ford, Inc., 920 F.2d 3 (7th Cir. 1990)(TILA provided no remedy for an allegedly forged retail installment agreement because "a forged note is by the common law absolutely void, unless it has in some way been ratified by the payor".)

I.

The In Pari Delicto Defense Should Be Afforded To Bar A Consumer's Recovery Where She Fraudulently Induces The Credit Agreement Which Entitles Her To Statutory Damages Under TILA.

In Bateman Eichler, supra, 472 U.S. 299, 105 S.Ct. 2622, and Pinter, supra, 486 U.S. 622, 108 S.Ct. 2063, this Court was asked to decide whether the in pari delicto defense barred relief to culpable plaintiffs under various strict liability provisions of federal securities laws, and in both cases, the Court found that the defense may apply. Specifically, in Pinter, the Court of Appeals for the Fifth Circuit held that the defense was not available in an action arising under section 12(1) of the federal Securities Act of 1933, 15 U.S.C. section 77l(1), because the section creates "a strict liability offense" rather than liability based on intentional misconduct. This Court reversed, stating:

> We feel that the Court of Appeals' notion that the in pari delicto defense should not be allowed in actions involving strict liability offenses is without support in history or logic. The doctrine traditionally has been applied in any action based on conduct that "transgresses statutory prohibitions." Courts have recognized the defense in cases involving strict liability offenses. One of the premises on which the in pari delicto doctrine is grounded is that "denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality." The need to

> deter illegal conduct is not eliminated simply because a statute creates a strict liability offense rather than punishing willful or negligent misconduct. Regardless of the degree of scienter, there may be circumstances in which the statutory goal of deterring illegal conduct is served more effectively by preclusion of suit than by recovery. In those circumstances, the in pari delicto defense should be afforded. (Citations omitted.)

486 U.S. at 633-34, 108 S.Ct. at 2071-72.

The Court's reasoning in Bateman Eichler and Pinter is directly applicable to the instant case in that Eldridge Auto Sales, Inc. seeks to establish that Ms. Purtle committed fraud in her credit application to induce Eldridge Auto Sales, Inc. to enter into the same purchase agreement which now entitles her to statutory damages under TILA, despite the fact that she admittedly suffered no actual damages, she was never misled or confused, and she understood all of her credit terms. Under these circumstances, the in pari delicto defense should be afforded to deny Ms. Purtle relief under TILA.

II.

The In Pari Delicto Defense Is Not Repugnant To The Federal Reserve Board's Interpretation Of Regulation Z, TILA's Purpose, Or Public Policy.

Even where TILA's statutory language has appeared unambiguous on its face, this Court has relied on the Board's interpretation to determine its true requirements, (see Anderson Bros. Ford v. Valencia, 452 U.S. 205, 101 S.Ct. 2266, 68 L.Ed.2d 783 (1981)), and so long as the Board's interpretation is not "demonstrably irrational," it should be dispositive. Ford Motor Credit Co. v. Milhollin, supra, 444 U.S. 555, 100 S.Ct. 790.

While TILA's statutory language does not expressly permit or forbid the application of the in pari delicto defense, in its Official Staff Commentary to Regulation Z, the Federal Reserve Board explicitly recognizes the possibility that the unenforceability of a credit agreement on the basis of equity, in conjunction with other considerations, could result in a defense to TILA. Specifically, in the Official Staff Commentary to sections 226.5(c) and 226.17(c)(1), the Board states:

> **The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation. (Emphasis added.)**

Since the Board itself recognizes the possibility that the unenforceability of a credit agreement on the basis of equity, in conjunction with other considerations, could result in a defense to TILA, the application of the in pari delicto defense is appropriate, particularly where, as here, the creditor asserts that the credit agreement is unenforceable due to the consumer's fraud. See 1 A. Corbin, Contracts Sec. 14, p. 31 (1963)("[T]ruth [of the warranty] is a condition precedent to the duty of the other party"); accord, 5 S. Williston, Contracts Sec. 673, pp. 168-171 (3d ed. 1961); J. Murray, Contracts Sec. 136, pp. 275-276 (2d rev. ed. 1974); Restatement (Second) of Contracts Sec. 3, Comment a (1981); U.C.C. Sec. 1-201(3), 1 U.L.A. 44 (1976).[3]

3 The Board's apparent recognition that a credit agreement may become unenforceable on equitable grounds, possibly providing a defense to TILA's disclosure provisions is consistent with TILA's numerous provisions providing for tolerances and modifications of disclosure requirements. See, e.g., 15 U.S.C. sections 1605(f), 1631(d), 1635(d), 1637(c)(5), 1639(b)(3), and 1639(l)(1), and the Official Staff Commentary, sections 226.15(d)(2) and (d)(3) which provide that those provisions may be modified by a court "when the equities dictate."

Similarly, permitting a creditor to assert the in pari delicto defense where a consumer fraudulently induces the credit agreement which entitles him to statutory damages would not interfere with TILA's Congressionally stated purpose in helping consumers shop for credit since a consumer who fraudulently induces a credit agreement is arguably not even a member of the class of consumers protected by TILA since consumer who intend to defraud creditors are unlikely to care about credit terms since they have no intention of repaying the debts. Section 1601; See also Anderson Bros. Ford, supra, 452 U.S. 205, 101 S.Ct. 2266; Ford Motor Credit Co. v. Milhollin, supra, 444 U.S. 555, 100 S.Ct. 790. Nor would recognition of the defense discourage TILA's private enforcement since a consumer who prevails on the defense is entitled to recover his attorneys' fees, and a creditor would be discouraged from raising the defense frivolously since he would be forced to pay the consumer's attorneys' fees in the event the defense fails.

Public policy also mandates that consumers who commit fraud in order to obtain credit be prevented from recovering statutory damages under TILA. See Higgins v. McCrea, 116 U.S. 671, 6 S.Ct. 557, 29 L.Ed. 764 (1886); Holman v. Johnson, 1 Cowp. 341, 343, 98 Eng.Rep. 1120, 1121 (K.B. 1775):

> The principle of public policy is this; ex dolo malo non oritur actio [out of fraud no action arises] . . . It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff.[4]

In Solevo v. Second New Haven Bank, [1974-1980 Transfer Binder] Consumer Cred. Guide (CCH) para. 98,241, Clearinghouse No. 20,771 (D.Conn. 1977),[5] a Connecticut district court expressly permitted a creditor to raise the consumer's fraudulent inducement of the credit agreement as a defense to TILA based on public policy, stating:

4 TILA itself recognizes the need to penalize fraudulent behavior in section 1644 (providing penalties for the fraudulent use of credit cards); section 1647(b) (permitting creditors to unilaterally terminate home equity plans and accelerate loans based on consumer fraud); and section 1611 (assigning criminal liability for persons who willfully and knowingly give false or inaccurate information under TILA.) See also Official Staff Commentary, section 226.5b(f)(2)(i)(fraud or misrepresentation is determined by applicable state law and may include acts of omission as well as overt acts, as long the requisite intent on the part of the consumer exists.)

5 A certified copy of the district court's opinion in Solevo v. Second New Haven Bank has been lodged with the Court.

> Allowing a defrauding plaintiff to maintain a truth-in-lending suit arguably vindicates public interest, but at too high a cost to other public policies. Forbidding this defense could well encourage potential plaintiffs to make fraudulent representation in order to induce loans carrying high finance charges, solely for the purpose of pursuing the statutory damages remedy to obtain a windfall of up to $1,000. Such an encouragement of fraud was far from Congress' intent in providing for private enforcement. The public interest in full credit disclosures can be adequately protected by relying on innocent debtors to take advantage of the statutory procedures in good faith.

Id at 5.

III.

The Sixth Circuit's Opinion Conflicts With The Seventh Circuit's Opinion In Streit v. Fireside Chrysler-Plymouth, Inc.

The Seventh Circuit Court of Appeals in Streit v. Fireside Chrysler-Plymouth, Inc., 697 F.2d 193 (7th Cir. 1983), relied on public policy to deny a consumer relief under TILA based on equitable considerations, specifically including the fact that the consumer had substantially misstated relevant financial information at the time the credit agreement was entered into. The court stated, in pertinent part:

> We believe that Congress would not have intended to impose liability on a creditor for a technical violation where there never was a transaction (beyond entering into the financing agreement) because of the consumer's complete failure to fulfill his obligations under the contract. In addition, [Plaintiff] substantially misstated relevant financial information (the payments outstanding on his trade-in) at the time the credit agreement was entered into.
>
> The consumer's acts were far more improper than anything the creditor did. . . .

> [TILA] was designed in large part to protect consumers from unscrupulous creditors and inaccurate and unfair billing and credit card practices; the Act was not created with primary purpose of protecting consumer from himself. . . .

Id. at 196-7; See also The National Consumer Law Center, Truth in Lending (3d ed. 1995)(citing Solevo, supra, [1974-1980 Transfer Binder] Consumer Cred. Guide (CCH) para. 98,241, Clearinghouse No. 20,771; Milhollin v. Ford Motor Credit Co., 531 F.Supp. 379 (D.Or. 1981), aff'd and rev'd in part on other grounds, 588 F.2d 753 (9th Cir. 1978), rev'd on other grounds, 444 U.S. 555, 100 S.Ct. 799, 63 L.Ed.2d 22 (1980); Sheperd v. Twin City Bank, 1992 WL 229484 (Ark. Ct. App. 1992)). See also Bostwick v. Cohen, 319 F.Supp. 875 (N.D. Ohio 1970).

Accordingly, permitting a creditor to defend a claim arising under TILA by proving that the consumer fraudulently induced the credit agreement is consistent with this Court's prior opinions, it is not repugnant to TILA's statutory language or the Regulations promulgated thereunder, it is consistent with TILA's Congressional purpose and public policy, and it is consistent with other court opinions which have specifically applied equitable considerations as a defense to TILA.

IV.

The Sixth Circuit's Affirmation Of The District Court's Award Of Attorneys' Fees Conflicts With Opinions Issued By The Fifth And Ninth Circuit Courts of Appeals.

Eldridge Auto Sales, Inc. also appealed the district court's award of attorneys' fees to Ms. Purtle based on the court's failure to consider the factors set forth in Johnson, supra, 488 F.2d at 717-19. In affirming the district court's attorneys' fees award, the Sixth Circuit apparently disagreed with the Ninth Circuit's ruling in Semar v. Platte Valley Federal Savings & Loan Assn, 791 F.2d 699 (9th Cir. 1986), wherein the court held that a district court must base its calculation of reasonable attorneys' fees in TILA cases on the factors established in Johnson and repeated in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951, 96 S.Ct. 1726, 48 L.Ed.2d 195 (1976), and that the district court's failure to follow these guidelines constitutes an abuse of discretion. Id.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

ELECTRONIC CITATION:
1996 FED App. 0247P (6th Cir.)

File name: 96a0247 p. 06

No. 95-5631

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Renee Purtle,	)	
	)	
Plaintiff-Appellant,	)	ON APPEAL from the
	)	the United States District
v.	)	Court for the Middle
	)	District of Tennessee
Eldridge Auto Sales, Inc.	)	
	)	
Defendant-Appellant.	)	

Decided and Filed August 1, 1996

Before: DAUGHTREY and MOORE, Circuit Judges; FORESTER, District Judge.

KARL S. FORESTER, District Judge. The appellant, Eldridge Auto Sales, Inc. ("Eldridge"), appeals the final judgement of the United States District Court for the Middle District of Tennessee, Northeast Division, entered against Eldridge for $1,000.00 in statutory damages and $5,444.05 in attorney's fees and costs pursuant to the Truth in Lending Act (the "TILA"), 15 U.S.C. § 1601, et seq. We affirm.

I

The facts of this case are largely undisputed. On July 23, 1993, the appellee, Renee Purtle, purchased a 1986 Chevrolet Blazer from Eldridge. Because she did not have the funds to pay cash for the car, Purtle requested financing from Eldridge and filled out a credit application. On her credit application, Purtle allegedly made several material misrepresentations regarding her employment. Because of these alleged misrepresentations, Eldridge agreed to extend credit to Purtle to purchase the car.

Pursuant to the sale, the parties executed two documents: (1) a Bill of Sale and Car Invoice, and (2) a Conditional Sales Contract. These two documents constitute the entire agreement of the parties. Under the terms of both

* The Honorable Karl S. Forester, United States District Judge for the Eastern District of Kentucky, sitting by designation.

the Bill of Sale and the Conditional Sales Contract, Purtle was to make weekly payments of $60.00 to Eldridge until the balance of $6,890.60 was paid. Although Purtle made several installment payments to Eldridge, many were late and several tendered checks were worthless. After Purtle defaulted on her payments for several consecutive weeks, Eldridge repossessed the car.

On January 11, 1994, Eldridge filed a state civil warrant against Purtle to recover $823.00, the amount past due and owing on the Blazer. On July 22, 1994, Purtle filed a separate action in federal court against Eldridge, alleging various violations of the TILA. Purtle also removed Eldridge's state civil warrant to federal court based on pendent jurisdiction. Eldridge subsequently filed a motion to remand the state civil warrant to state court and a motion to dismiss the federal action. The district court granted Eldridge's motion to remand, but denied its motion to dismiss. Purtle then filed a motion for partial summary judgement on the issue of Eldridge's TILA liability. Five days prior to trial, Eldridge sought to assert a counter-claim against Purtle alleging fraud and promissory fraud. The district court granted Purtle's motion for partial summary judgement, leaving damages as the only issue to be litigated at trial. In the same order, the district court denied Eldridge's motion for leave to file the counter-claim.

On February 6, 1995, a bench trial was held on the issue of the appropriate statutory damages and attorney's fees to be awarded under TILA. After hearing proof and receiving affidavits from Purtle's attorneys, the district court entered final judgement on March, 9, 1995, awarding Purtle $1,000.00 in statutory damages and $5,444.05 in attorney's fees and costs. Eldridge filed a timely notice of appeal.

II

Eldridge submits the following issues for review:

(1) Whether Purtle is entitled to recover statutory damages under TILA despite the fact that she fraudulently induced Eldridge to enter into the credit agreement upon which actual damages and fully understood all of her credit terms; and

(2) Whether Purtle's award of attorney's fees was excessive in light of her fraudulent inducement of the credit agreement, Eldridge's lack of culpability or bad faith, the Congressional purpose underlying the TILA, and Purtle's actual recovery.

This Court reviews the district court's award of statutory damages under the TILA under the de novo standard of review, Holmes v. Donovan, 984 F.2d 732, 735 (6th Cir. 1993), and its award of attorney's fees and costs for an abuse of discretion, Wren v. Gould, 808 F.2d 493, 504 (6th Cir. 1987).

III

Enacted in 1968, the TILA imposes mandatory disclosure requirements on those who extend credit to consumers. 15 U.S.C. § 1601, et seq. The TILA was specifically designed to remedy problems that had developed from the rapidly expanding use of consumer credit in the 1960s. The purpose of the TILA, as stated by Congress, is as follows:

> It is the purpose of this title . . . to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit. . . .

15 U.S.C. § 1601 (a). The Federal Reserve Board has been delegated the power to promulgate regulations to carry out the TILA's purpose. 15 U.S.C. § 1604. These regulations, among other things, mandate specific disclosures in credit transactions. See 12 C.F.R. § 226. In the event that a creditor fails to disclose any of the credit terms required under the TILA and its regulations, a consumer may bring a civil action against the creditor. 15 U.S.C. § 1640. If a violation is proven, the consumer may recover twice the amount of the finance charge (but not less than $100.00 nor more than $1,000.00). Id. at § 1640 (a)(2)(A). The purpose of the statutory recovery is "to encourage lawsuits by individual consumers as a means of enforcing creditor compliance with the Act." Watkins v. Simmons & Clark, Inc., 618 F.2d 398, 399 (6th Cir. 1980). The TILA also permits recovery of reasonable attorney's fees and costs. 15 U.S.C. § 1640 (a)(3). A plaintiff in a TILA case need not

prove that he or she suffered actual monetary damages in order to recover the statutory damages and attorney's fees. Watkins, 618 F.2d at 399. Nor is it necessary to show that the consumer was actually misled or deceived by an ambiguous credit term in order to prevail. Smith v. Chapman, 614 F.2d 968, 971 (5th Cir. 1980); Millholin v. Ford Motor Credit Co., 531 F. Supp 379, 386 (D. Ore. 1981).

IV

The issue of the appropriate statutory penalty, reasonable attorney's fees, and costs to be awarded Purtle came before the district court on February 6, 1995. After hearing testimony and reviewing the relevant documents, the district court determined that Eldridge violated the TILA in several ways. First, Eldridge failed to disclose the finance charge and the annual percentage rate, in violation of 12 C.F.R. § 226.18 (d) and (e). Second, Eldridge used the term "total credits" as opposed to "amount financed," in violation of 12 C.F.R. § 226.18 (b). Finally, Eldridge violated 12 C.F.R. 226.18 (j) by failing to disclose the total sales price. Although Purtle admittedly suffered no actual damages as a result of Eldridge's incomplete disclosures, the district court entered judgement against Eldridge in the amount of $1,000.00 pursuant to § 1640 (a)(2)(A)(I).

The district court then turned to the issue of attorney's fees and reviewed Purtle's petition for attorney's fees, the accompanying time logs of her attorneys, and Eldridge's specific objections thereto. Noting that this is a straightforward TILA case, the district court determined that it did not require the expertise of more than one lawyer. Thus, to the extent that the fees of Purtle's two attorneys were

duplicative, the district court awarded one fee. The district court also declined to award attorney's fees for the time Purtle's attorneys spent conferring with each other. However, the district court did award Purtle $5,242.50 in attorney's fees and $201.55 in costs.

V

On appeal, Eldridge essentially sets forth two arguments. First, Eldridge argues that Purtle is not entitled to recover statutory damages because she fraudulently induced Eldridge to enter into the credit agreement, she suffered no actual damages, and she understood all of her credit terms. Second, Eldridge argues that if statutory damages are appropriate, the district court's award of attorney's fees was excessive because it failed to consider the parties' relative culpability, TILA's congressional purpose, and Purtle's actual recovery. Each argument will be addressed separately below.

A. THE DISTRICT COURT'S AWARD OF STATUTORY DAMAGES

Eldridge does not challenge the district court's application of the TILA to the credit disclosures made to Purtle or its determination that Eldridge failed to make certain disclosures mandated by the TILA. Rather, Eldridge argues that Purtle's alleged misrepresentations in her credit application are a defense to its technical violations of the TILA. This circuit has not yet addressed the issue of whether fraudulent inducement of a credit agreement is a defense to TILA liability.

According to Eldridge, the TILA disclosure requirements only apply to credit transactions which create a contractual relationship between a consumer and a creditor. See, e.g., 15 U.S.C. § 1631 (a); 12 C.F.R. §§ 226.2 (a)(13) and 226.17 (c)(1); Wachtel v. West, 476 F.2d 1062 (6th Cir.), cert. denied 141 U.S. 874 (1973). Although the TILA's disclosure requirements do not arise until a contractual relationship exists between the parties, the TILA does not define when such contractual relationship arises. Rather, the TILA relies on state law to define the same. See 12 C.F.R. § 226.2 (b)(3). Under Tennessee law, the fraudulent inducement of a contract invalidates the contract because there is no meeting of the minds and illusory consideration. Seaton v. Lawson Chevrolet-Mazda, Inc., 821 S.W. 2d 137 (Tenn. 1991); Dozier v. Hawthorne Development Co., 37 Tenn. App. 279, 262 S.W. 2d 705 (1953). As a result, Eldridge argues that Purtle's TILA claim must fail because there was no "obligation" requiring disclosure under 15 U.S.C. § 1631 (a) ("a creditor or lessor shall disclose to the person who is obligated ...") (emphasis added). See Streit v. Fireside Chrysler-Plymouth, Inc., 697 F.2d 193 (7th Cir. 1983).

Eldridge also points out that neither the TILA's express language nor its congressional purpose indicate that a state law defense to the validity or enforcement of a contract would not be a defense to its disclosure requirements. Moreover, Eldridge points out that the TILA is a remedial statute which serves two purposes: (1) to permit an individual consumer to recover for her injuries; and (2) to deter socially undesirable lending practices. See 15 U.S.C. § 1601 (a); Murphy v. Household Finance Corp., 560 F.2d 206 (6th Cir. 1977). Eldridge contends that the congressional

purpose would not be served by awarding Purtle any statutory damages because she admittedly suffered no damages, was never misled or confused by the credit agreement, and understood all of her credit terms. See Streit, 697 F.2d at 197. Furthermore, Eldridge contends that as a matter of public policy fraudulent conduct should not be condoned or encouraged nor should it serve as the basis for recovering damages. See id.; Rowland v. Carriers Ins. Co., 738 S.W.2d 183 (Tenn. 1987); Anderson v. Chattanooga General Services Co., 631 S.W.2d 380 (Tenn. 1981); Foster v. ESIS, Inc., 563 S.W.2d 180 (Tenn. 1978). Therefore, Eldridge argues that Purtle is not entitled to recover statutory damages.

On the other hand, Purtle argues that her alleged misrepresentations of her financial condition are no defense to Eldridge's violation of the TILA. The Fifth Circuit Court of Appeals has held that once a court finds a violation of the TILA, no matter how technical, the court has no discretion as to the imposition of civil liability. Grant v. Imperial Motors, 539 F.2d 506 (5th Cir. 1976). This Court agrees in Grant. According to that Court, "once the court finds a violation, no matter how technical, it has no discretion with respect to the imposition of liability." Id. at 510. See also Williams v. Public Finance Corporation, 598 F.2d 349 (5th Cir. 1979). In reaching this conclusion, the Court relied on the civil liability section of the TILA, which provides:

> Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part of part D of this subchapter with respect to any person is liable to such person in an amount equal to the sum of

> (1) any actual damage sustained by such person as a result of the failure;
>
> (2)(A) in the case of an individual action twice the amount of any finance charge in connection with this transaction, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000.00;
>
> * * *
>
> (3) in the case of any successful action to enforce the foregoing liability, the cots of the action, together with a reasonable attorney's fee as determined by the court.

15 U.S.C. § 1640 (a). The Eighth Circuit Court of Appeals has followed the same rule. Dryden v. Lou Budke's Arrow Finance Company, 630 F.2d 641, 646 (8th Cir. 1980)("the ultimate nonenforceability of a credit agreement under state law should not be a defense to an action under the TILA for failure to disclose the information required by the act"). Based on the unambiguous statutory language, it is clear that unless one of the defenses provided in the TILA is applicable to this transaction, the district court appropriately awarded Purtle the statutory penalty set out above.

B. THE DISTRICT COURT'S AWARD OF ATTORNEY'S FEES

Section 1640 (a)(3) of the TILA provides that a successful plaintiff is entitled to "reasonable attorney fees, as determined by the Court." 15 U.S.C. § 1640 (a)(3). Eldridge

argues that the district court abused its discretion in awarding attorney's fees to Purtle. Although the district Court appropriately considered the simplicity of the case, the number of attorneys necessary, the reasonable hourly rate, and the time and labor expended, Eldridge argues that the attorney's fee award was excessive because certain other factors were not considered. Specifically, Eldridge argues that the district court failed to consider the results obtained and the undesirability of the case, the alleged violations of the TILA and the congressional purpose underlying the TILA, Eldridge's lack of culpability or bad faith, and the amount of the statutory award.

First, Eldridge contends that the undisputed facts demonstrate that Purtle fraudulently induced Eldridge to enter into a credit agreement upon which her statutory damages were based. Eldridge argues that Purtle's fraudulent inducement of the credit agreement demonstrates the undesirability of the case because her recovery, if any, encourages the perpetration of fraud and permits a culpable party to benefit from her own fraudulent conduct. Second, Eldridge argues that because Purtle suffered no actual damages and fully understood her credit terms, the district court should have considered the congressional purpose underlying the TILA as a factor in determining its award of attorney's fees. Eldridge points out that the congressionally stated purpose of the TILA is to assure the meaningful disclosure of credit terms to ensure fully informed consumers. Eldridge argues that Purtle should not be awarded attorney's fees because there is no nexus between the alleged violations of the TILA and its purpose. See Dzadovsky v. Lyons Ford Sales, Inc., 452 F.Supp. 606 (W.D.Pa. 1978), aff'd, 593 F.2d 538 (3rd Cir. 1979). Third,

Eldridge argues that the district court should have considered Eldridge's lack of culpability is not an appropriate factor when determining the award of attorney's fees. Although Eldridge agrees that lack of culpability is not an appropriate factor when determining a statutory award, Eldridge contends that it was an abuse of discretion not to consider it in awarding attorney's fees. See Thrift Funds of baton Rouge Inc. v. Jones, 274 So.2d 150 (La.), cert. denied, 414 U.S. 820 (1973). Finally, Eldridge argues that the equities of this case weigh strongly in its favor and thus the district court should not have awarded Purtle attorney's fees so greatly in excess of her recovery. Purtle, on the other hand, argues that the district court did not abuse its discretion in awarding her attorney's fees.

Because of the mandatory nature of the award of attorney's fees under the TILA and because the district court held that Eldridge violated this act, the district court appropriately considered the issue of attorney's fees. The attorney's fees are not limited by the amount of Purtle's recovery. See In re Pine, 705 F.2d 936, 938 (7th Cir. 1983); McGowan v. King, Inc., 661 F.2d 48 (5th Cir. 1981). There is no requirement that Purtle suffer actual damages to receive under the TILA. Dzadovsky 593 F.2d at 539. The district court made a complete review of the attorney's fees documentation, considered all the relevant factors, and subtracted those portions of the fee which were unnecessary. Therefore, the district court did not abuse its discretion in awarding Purtle attorney's fees.

C. ATTORNEY'S FEES FOR THIS APPEAL

In the event that this court upholds the district court's ruling, Purtle argues that she is entitled to reasonable attorney's fees for this appeal. Eldridge failed to address this issue in its briefs.

Generally, the TILA allows a plaintiff prevailing on a TILA claim on appeal to be compensated for appellate work. 15 U.S.C. § 1640 (a)(3); Dejesus v. Banco Popular de Puerto Rico, 918 F.2d 232, 235-36 (1st Cir. 1990); Diaz v. Bank of Hawaii, 732 F.2d 1401, 1403 (9th Cir. 1984); Thomas v. Myers-Dickson Furniture Co., 479 F.2d 740, 748 (5th Cir. 1973). We will determine the appropriate fee awarded after receiving the relevant documentation from Purtle.

VI

For the foregoing reasons, we **AFFIRM.**

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

RENEE PURTLE	)	
	)	
vs.	)	NO. 2:94-0054
	)	
ELDRIDGE AUTO SALES, INC.	)	

ORDER

In accordance with the memorandum contemporaneously filed, judgment is entered for the plaintiff in the amount of $1,000.00. The court further awards to plaintiff attorney fees in the amount of $5,242.50, and costs in the amount of $201.55.

s/ L. Clure Morton
L. CLURE MORTON
SENIOR U.S. DISTRICT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

RENEE PURTLE	)	
	)	
vs.	)	NO. 2:94-0054
	)	
ELDRIDGE AUTO SALES, INC.	)	

MEMORANDUM

I. INTRODUCTION

Plaintiff brought this suit against defendant for violations of the Truth in Lending Act ("TILA"), 15 U.S.C. 1601 et seq. Five days prior to trial, the defendant sought to allege a counterclaim against plaintiff for fraud and promissory fraud. Defendant alleges that, because plaintiff fraudulently induced the sale by misrepresenting her employment and disposable income, it is entitled to avoid the purchase agreement.

In a February 3, 1995 order, this court granted plaintiff's motion for partial summary judgment on the issue of whether defendant had violated certain provisions of TILA. In addition, the court denied defendant's motion to

file a counterclaim. On February 6, 1995, a bench trial was held on the remaining issues of the appropriate statutory penalty and attorneys' fees, afforded pursuant to 15 U.S.C. 1640 (a)(2)(A)(I), 1640 (a)(3). On February 10, 1995, attorneys for plaintiff submitted affidavits and time logs in support of their petition for an award of attorneys' fees. On March 6, 1995, defendant made specific objections to that petition.

This memorandum is in support of the court's February 3, 1995 order granting plaintiff's motion for summary judgement and denying defendant's motion to file a counterclaim for fraud. This memorandum is also in support of today's order entering judgement of $1,000.00 for the plaintiff and awarding $5,444.05 in attorneys' fees and costs.

II. FACTS

The facts are not in dispute. On July 23, 1993, the plaintiff purchased a 1986 Chevrolet Blazer on credit from defendant. The parties executed two documents, one entitled Bill of Sale and Car Invoice, the other entitled Conditional Sales Contract. These two form the entire agreement between the parties. The bill of sale, a copy of which is attached as Exhibit A to this memorandum, lists the follow charges:

Cash Delivered Price	5795.00
Additional Equipment and Accessories	_____
Trade-In Allowance	1000.00
Trade Difference	4795.00

TOTAL COST INCLUDING EXTRAS

Cash Payment.....$____	
Filing and Notary Fees.....$12.50	12.50
Time Price Differential	1747.42
Local Option Tax	36.00
State Tax	299.68
Total Tax	335.68
State License and Title	_____
Net Trade Allowance	_____
TOTAL	_____
TOTAL CREDITS	5143.18
BALANCE DUE	6890.60

III. STANDARD OF REVIEW

The standards governing the decision on a motion for summary judgement are well established. Summary judgement is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgement as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The party moving for summary judgement bears the initial burden of showing an absence of a genuine issue of material fact. ID at 323. This burden may be satisfied by presenting affirmative evidence that negates an element of the nonmovant's claim or by demonstrating "an absence of evidence to support the nonmoving party's case." ID. at 325. Upon meeting this burden, the burden shifts to the nonmoving party, who cannot rest on the pleadings but must present some evidence showing genuine issues for trial. Id. at 324.

A fact is "material" only if its resolution will affect the outcome of the lawsuit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Moreover, a dispute about a material fact is "genuine" within the meaning of Fed. R. Civ. P. 56 only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient." Id. at 252. Moreover, a plaintiff cannot avoid summary judgement on the basis of "nebulous assertions." Gordon v. Barnes Pumps, Inc., 999 F.2d 133,138 (6th Cir. 1993). In ruling on a motion for summary judgement, this court must view the evidence in the light most favorable to the nonmoving party to determine

whether a genuine issue of material fact exists. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970); White v. Turfway Park Racing Assn., Inc., 909 F.2d 941, 943-44 (6th Cir. 1990).

IV. DISCUSSION

A. The Truth in Lending Act

1. TILA Disclosure Requirements

Enacted in 1968, the Truth in Lending Act ("TILA") imposes mandatory disclosure requirements on those who extended credit to consumers. 15 U.S.C. 1601 et seq. TILA was designed to remedy problems that had developed from the rapidly expanding use of consumer credit in the 1960's. As buying on credit became increasingly more attractive to consumers, consumers remained "remarkably ignorant of the nature of their credit obligations and the cost of deferring payment." Mourning v. Family Publications Service, 411 U.S. 356, 363 (1973). One House committee noted:

> By requiring all creditors to disclose credit information in a uniform manner, and by requiring all additional mandatory charges imposed by the creditor as an incident to credit to be included in the computation of the annual percentage rate, the American consumer will be given the information he needs to compare the cost of credit and to make the best informed decision on the use of credit.

Murphy v. Household Finance Corp., 560 F.2d 206 (6th Cir. 1977).

Congress explicitly stated this purpose in TILA:

> It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed
> use of credit. . . .

TILA, 15 U.S.C 1601 (a)(West 1982)(emphasis added).

Congress delegated authority to the Federal reserve Board to promulgate regulations to carry out TILA's purpose. 15 U.S.C. 1604. The Board promulgated Regulation Z, 12 C.F.R. 226, which mandates specific disclosures in a closed-end credit transaction. 12 C.F.R. 226.18(a)-(r). Regulation Z provides, in part:

> **226.18 Content of Disclosures.**
>
> For each transaction, the creditor shall disclose the following information as applicable:
>
> (a) Creditor. The identity of the creditor making the disclosures.
>
> (b) Amount Financed. The amount financed, using that term, and a brief description such as the amount of credit provided to you or on your behalf. The amount financed is calculated by:
>
> (1) Determining the principal loan amount or the cash price (subtracting any down payment);

(2) Adding any other amount that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

© Itemization of amount financed. (1) A separate written itemization of the amount financed, including: (I) The amount of any proceeds distributed directly to the consumer.

(ii) The amount credited to the consumer's account with the creditor.

(iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons.

(iv) The prepaid finance charge.

. . .

(d) Finance charge. The finance charge, using that term, and a brief description such as "the dollar amount the credit will cost you."

(e) Annual percentage rate. The annual percentage rate, using that term, and a brief description such as "the cost of your credit at a yearly rate."

. . .

(g) Payment schedule. The number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

(I) The dollar amounts of the largest and smallest payments in the series.

(ii) A reference to the variations in the other payments in the series.

(h) Total of payments. The total of payments, using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments."

. . .

(j) Total sale price. In a credit sale. the total sale price, using that term, and a descriptive explanation (including the amount of any down payment) such as "the total price of your purchase on credit, including your down payment of $___." The total sales price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.

12 C.F.R 226.18 (1994) (emphasis original).

2. TILA Violations

In the event a creditor fails to disclose one or more credit terms required by TILA and Regulation Z, a consumer may bring a civil action against the creditor. 15 U.S.C. 1640. A consumer who proves a violation may recover twice the amount of the finance charge (but not less than $100 nor more than $1000), plus costs and attorney fees. Id. at 1640(a). The purpose of this statutory recovery was to " encourage lawsuits by individual consumers as a means of enforcing creditor compliance with the Act." Watkins v. Simmons & Clark, 618 F.2d 398, 399 (6th Cir. 1980).

A plaintiff in a TILA case need not prove that he suffered actual monetary damages in order to recover the statutory damages and attorney's fees. Watkins V. Simmons & Clark, 618 F.2d 398,399 (6th Cir. 1980); Addison v. Britt, 350 S.E.2d 158 (N.C. App. 1986). Nor must a plaintiff prove that he was misled or deceived by ambiguous credit terms in order to prevail. Addison v. Britt, 350 S.E.2d 158 (N.C. App. 1986); Forbes Credit Union v. Mewhinney, 638 P.2d 383 (Ga. 1982). TILA is a strict liability statute. and statutory damages flow as a matter of right to any plaintiff who can show a technical violation. Leathers v. Peoria Tovota-Volvo, 824 F. Supp. 155 (Central Dist. III. 1983); McCov v. Salem Mortgage Co., 74 F.R.D. 8 (E.D. Mich. 1976). Indeed. once a court finds a violation of TILA, no matter how technical. it has no discretion with respect to imposition of liability. Grant v. Imperial Motors, 539 F.2d 506 (11th Cir. 1976). Kocsis v. Pierce, 480 N.W. 2d 598 (Mich. App. 1991). Cf. Jasper County Savings Bank v.

Gilbert, 328 N.W. 2d 287 (Iowa 1982) (holding that not every technical violation warrants an award of penalty).

Upon review of defendant's bill of sale and the itemized charges therein, this court finds as a matter of law that defendant has violated TILA in four ways. The two most glaring TILA violations on the face of the bill of sale are defendant's failure to disclose the finance charge and annual percentage rate, in violation of 12 C.F.R 226.18 (d) and (e). Regulation Z clearly requires the terms "finance charge" and "annual percentage rate" to be used. 12 C.F.R. 226.18 (d), 226.18 (e). In addition, Regulation Z requires creditors to describe the meaning of those terms. Id.

Defendant argues that its use of the terms "time price differential" as opposed to "finance charge" is acceptable, and indeed more accurate, because any finance charge assessed by defendant was made up entirely of the lump-sum time price differential, it does not charge an annual percentage rate, and therefore no disclosure of that term was required.

This argument is unpersuasive. In the defendant's business the time price differential is calculated as "20 percent of the total credits, plus 20 percent of the remaining balance due after 52 weeks of payments, plus 20 percent of the remaining balance due after 140 weeks of payment." (Response of Plaintiff's Interrogatory No. 11). Use of the term "time price differential" in place of "finance charge" and "annual percentage rate" deprives the consumer of meaningful disclosure. In Burton v. Public Finance Corp. of Akron No. 3, the Sixth Circuit stated:

> Finance companies can write simple sentences and use simple words to inform consumers of the terms of loan agreements. However, where a loan agreement is drafted to obscure the relevant terms of the agreement, rather than to explain the terms in clear and meaningful language, the agreement violates the TILA.

657 F.2d 842, 843 (6th Cir. 1981). Accordingly, defendant committed TILA violations when it failed to explain the finance charge and annual percentage rate applicable to this transaction.

Defendant also violated TILA by using the term "total credits" as opposed to "amount financed," in violation of 12 C.F.R. 226.18 (b). Finally, defendant violated TILA by failing to disclose the total sales price, in violation of 12 C.F.R. 226.18 (j).

B. Defendant's Motion to Add a Counterclaim

After conducting discovery, defendant moved to assert a counterclaim against plaintiff for fraud and promissory fraud. Defendant alleges that plaintiff misrepresented her financial condition, employment status and ability to pay at the time of the transaction. Had defendant known plaintiff's true financial condition, it insists it would not have extended credit to here without a co-signer. (Affidavit of Fabien Eldridge. 2). Defendant argues that plaintiff's misrepresentation render the contract voidable, thereby relieving defendant from liability for TILA violations.

For purposes of summary judgment, the court will assume that plaintiff indeed misrepresented her financial status at the time of the transaction. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970); White v. turfway racing assn., Inc., 909 F.2d 941, 943-44 (6th Cir. 1990)(Court will view evidence in a light most favorable to the nonmoving party to determine whether a genuine issue of material facts exists). Even so, defendant cannot avoid liability under TILA. 15 U.S.C. 1640 (c). The defense available in a TILA case include clerical errors, computer malfunctions and the like, pursuant to 15 U.S.C. 1640 (c), or good faith compliance with an existing rule, pursuant to 15 U.S.C. 1640 (f).

Defendant has cited no authority for the proposition that plaintiff's misrepresentation can act to offset defendant's liability under Tila, and this court has found no such authority. On the contrary, defendant cannot escape liability for failing to make disclosures required by TILA and Regulation Z. TILA imposes liability on creditors for even the slightest deviations from disclosure requirements, to encourage creditors to comply with those requirements and to encourage meaningful disclosure of credit terms. Watkins v. Simmons & Clark, 618 F.2d 398 (6th Cir. 1980). Therefore, plaintiff's misrepresentation is no defense to liability under TILA.

Because plaintiff's misrepresentations of her financial condition are no defense to TILA violations, defendant's request to amend her answer to assert fraud and promissory fraud amounts to a motion to add a permissive counterclaim. A permissive counterclaim is one that does not arise out of the same transaction or occurrence as the opposing party's claim. Fed. R. Civ. P. 13(b); City of Cleveland v. Cleveland

Electric Illuminations Co., 570 F.2d 123 (6th Cir. 1978). In this case, the TILA cause of action arises out of the bill of sale and centers on whether particular disclosures in that bill of sale are adequate. A counterclaim of fraud, however, would require the court to conduct a much broader inquiry into the circumstances surrounding the transaction. See Agliam v. Ohio Savings Ass'n., 99 F.R.D. 145 (N.D. Ohio 1983). A district court may refuse jurisdiction over a counterclaim when allowing it would complicate the litigation.[2] Id. Accordingly, the defendant's motion to amend its answer to add a counterclaim for fraud and promissory fraud is denied.

C. Statutory penalty

Section 1640 of TILA provides that a creditor who fails to comply with the disclosure requirements set forth in TILA and Regulation Z is liable for (1) actual damages sustained, (2) a statutory penalty of twice the finance charge (but not less than $100 nor more than $1000), and (3) costs and a reasonable attorney's fee. 15 U.S.C. 1640 (a)(1), 1640 (a)(2)(A)(I), 1640 (a) (3). In this case, plaintiff has sustained no actual damages as a result of defendant's incomplete disclosures. 15 U.S.C. 1640 (a)(1). Pursuant to 1640 (a)(2)(A)(I), Plaintiff is entitled to statutory damages in the amount of twice the finance charge or maximum of $1000.

[2] It should also be noted that before this action began, the defendant sued plaintiff in state court for the outstanding debt upon which she defaulted. That case is currently pending, and any allegations of fraud can be raised in state court.

Therefore, the court will enter judgment for plaintiff in the amount of $1000. 15 U.S.C. 1640 (a)(2).

D. Attorneys' fees

Section 1640(3) provides that a creditor guilty of TILA violations is also liable for "a reasonable attorney's fee, as determined by this court." 15 U.S.C. 1640 (3). The court has reviewed the plaintiff's petition for attorney's fees and the accompanying time logs of Craig Fickling and Marla Williams. The court has also reviewed the specific objections thereto. In the court's opinion, this is a fairly straightforward TILA case. It is clear that the defendant's bill of sale did not comport with disclosure requirements imposed by TILA and Regulation Z.

This case did not require the expertise of more than one lawyer. Therefore, top the extent that the entries of Mr. Fickling and Ms. Williams seem duplicative, only one fee will be awarded. Furthermore, because the court feels that only one lawyer could have adequately represented the plaintiff's interest in this case, no fees will be awarded to Mr. Fickling or Ms. Williams for their time spent conferring with each other. To those ends, the following entries are disallowed:

Time log of Mr. Fickling:

.2 hrs	July 15, 1994	(Mtg. w/ Marla Williams)
.5	July 26, 1994	(" " " ")
.2	July 28, 1994	(Memo to ")
.25	August 15, 1994	(second entry -mtg.w/Williams)
.4	August 31, 1994	(" " ")
.3	Nov. 14, 1994	(" " ")
.1	Nov. 29, 1994	(" " ")
.5	Nov. 30, 1994	(" " ")
.4	Jan. 10, 1995	(" " ")
.1	Jan. 9, 1995	(half of second entry disallowed -mtg. w/ Ms. Williams)
.4	Feb. 4, 1995	(TC w/ Marla Williams)

Time log of Marla Williams:

.5	July 11, 1994	(duplicative)
.2	July 15, 1994	(Meeting with co-counsel)
.5	July 19, 1994	(" " ")
.5	July 26, 1994	(" " ")
.2	August 3, 1994	(duplicative)
.1	August 11, 1994	(Meeting with co-counsel)
.25	August 31, 1994	(first entry-mtg. w/co-counsel)
1.5	Sept. 25, 1994	(duplicative)
.75	Sept. 26, 1994	(duplicative)
.5	Sept. 27, 1994	(")

.625	Oct. 27, 1994	(half of first entry is duplicative)
1.0	Oct. 28, 1994	(half of time is duplicative)
.25	Nov. 2, 1994	(Meeting w/ co -counsel)
.25	Nov. 14, 1994	(half was meeting with cocounsel)
.25	Nov. 17, 1994	(Meeting with co-counsel)
.1	Nov. 29, 1994	(half was meeting w/ co-counsel)
.25	Nov. 30, 1994	(" " " ")
2.25	Dec. 11, 1994	(duplicative)
.1	Jan. 10, 1995	(.1 hours-mtg. w. co-counsel)
.75	Jan. 11, 1995	(second entry is duplicative)
.2	Jan. 19, 1995	(duplicative)
.5	Jan. 25, 1995	(")
1.25	Feb. 1, 1995	(")
.1	Feb. 3, 1995	(review of order is duplicative)
.25	Feb. 4, 1995	(duplicative)
2.0	Feb. 6, 1995	(both entries duplicative)

Defendant argues that the court should not award attorney fees to either Marla Williams or Craig Fickling for time spent seeking removal of the state claim to federal court, because the law clearly forbids such removal and the motion was improper. This set of objections in unnecessary because

Mr. Fickling and Ms. Williams did not charge for the time spent trying to remove the state case to this court.

The court finds the remaining entries to be reasonable. Any of defendant's objections not specifically addressed herein are without merit and overruled. A total of 18.475 hours have been disallowed. Attorneys for plaintiff are entitled to compensation for the remaining 52.425 hour work on this case.

The court finds that $100 per hour is a reasonable fee for this type of case. Therefore, the court will award fees in the amount of $5242.50. Plaintiff is also entitled to expenses in the amount of $201.55.

V. CONCLUSION

On February 3, 1995, for the reasons set forth above, plaintiff's motion for partial summary judgement was granted, and defendant's motion to add a counterclaim was denied.

Today, the court will enter judgement for plaintiff for $1000, award attorneys fees in the amount of $5242.50 and award costs in the amount of $201.55. An appropriate order will be entered.

s/ L. Clure Morton
L. CLURE MORTON
SENIOR U.S. DISTRICT JUDGE

BILL OF SALE
and
CAR INVOICE

PHONE
526-4117

ELDRIDGE AUTO SALES

1408 West Broad Street
Cookeville, Tn 38501

SOLD TO Renee Lynn Riggins DATE 7/13 19 93
ADDRESS Rt. 7 Box 295 MILEAGE 72,200
Cookeville, Tn 38501 SALEMAN MC

YEAR MODEL	MAKE	STYLE BODY
86	Chevy	Blazer
		Tan

SERIAL NUMBER V.I.N
1G8CT18RIG8206558

TRADE IN:

Make Used Car Nissan Model Sentra

Year 87 Milleage___

I.D.No. jn1pb2153hw567955 Lic.No.

Payoff Owed To_____
Trade Allowance 1,500.00 Payoff 500.00

Lien Notes and Conditional Sales Contract Assigned To
Full coverage ins. required Dn payment of $50.00
7-31-93 & 8-14-93

BILL OF SALE

For the considerations set forth the undersigned hereby sells, transfers and conveys the automotive vehicle described herein to the person or firm listed above. It warrants the title to said vehicle to be free of all liens except those herein described and will defend the title against lawful claims of all other persons.

ELDRIDGE AUTO SALES

BY: s/ Michael L. Chambers

State of Tennessee

County of Putnam

Subscribed and sworn to before me this ___ day of ____19__

Notary Public _____

My commission expires_____19__

Cash Delivered Price 5795.00

Additional Equipment and
Accessories _____

Trade-In Allowance		1000.00
Trade Difference		4795.00
TOTAL COST INCLUDING EXTRAS		
Cash Payment	$_____	_____
Filing and Notary Fees	$12.50	12.50
Time Price Differential		1747.42
Local option Tax		36.00
State Tax		299.68
Total Tax		335.68
State License and Title		_____
Net Trade Allowance		_____
TOTAL		
	TOTAL CREDITS	5143.08
	BALANCE DUE	6890.60

Amount of Notes(s) (Title Retained)
To Be Paid in 114.8 installments of $60.00 each

The purchaser in siging tyjhis contract hereby states that he more than 18 years of age.

PURCHASER: s/RENEE L. RIGGINS

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

RENEE PURTLE	)	
	)	
vs.	)	NO. 2:94-0054
	)	
ELDRIDGE AUTO SALES, INC.	)	

MEMORANDUM

Before the court is defendant's motion to compel production of documents. Plaintiff responded on January 25, 1995 by depositing some documents under seal with the court and objecting on the basis of relevance. Plaintiff also moved for a protective order.

Upon review of defendant's requests for document, the court finds that none are relevant to this cause of action. Defendant argues it is entitled to discover documents that

bear on the amount of damages plaintiff may owe defendant, as an offset to defendant's potential liability under the Truth in Lending Act. Defendant also asserts it is entitled to documents that may tend to prove that plaintiff made misrepresentations on her credit application, thereby rendering the contract voidable. The court disagrees.

The court concludes that, if defendant is found liable under the Truth in Lending Act for inadequate disclosures, defendant is not entitled to offset damages. Furthermore, the fact that plaintiff may have misled defendant into selling her a car is no defense to defendant's failure to make adequate disclosures required by the Truth in Lending Act and Regulation Z. 15 U.S.C. 1601 et seq., 12 C.F.R. 226.

Therefore, plaintiff's motion to compel production of documents and for monetary sanctions (Docket No. 31) is denied. Plaintiff's motion for a protective order (Docket No. 34) is also denied as moot. Defendant shall respond to plaintiff's motion for partial summary judgement no later than February 1, 1995. The trial in this action will still take place at 10:00 a.m. on February 6, 1995. The court will rule on plaintiff's motion for summary judgement, at the latest immediately prior to trial. An appropriate order will be entered.

s/ L. Clure Morton
L. CLURE MORTON
SENIOR U.S. DISTRICT JUDGE